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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051288
Party	Plaintiff HTC Corporation
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Submission	Opposition/Response to Motion
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Date	11/02/2009
Attachments	Opposition.pdf ( 5 pages )(165693 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HTC CORPORATION,

HTC,

v.

TC CONNECTION CORP.,

Registrant.

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Cancellation No. 92051288

U.S. Registration No. 3,450,977; and

U.S. Registration No. 3,442,507.

**HTC'S OPPOSITION TO REGISTRANT'S  
MOTION TO DISMISS FOR FAILURE TO SERVE**

HTC Corporation ("**HTC**"), hereby opposes TC Connection Corp.'s ("**Registrant**")

Motion to Dismiss for Failure to Serve, filed on October 14, 2009 ("**Motion to Dismiss**"). As set forth herein, (i) Registrant was properly served under the applicable rules; and (ii) Registrant has had actual knowledge of the Petition for Cancellation, and therefore, there are no grounds to support Registrant's claim of prejudice.

1. On July 30, 2009, the Petition for Cancellation was served upon Registrant *via* first class mail at Registrant's correspondence address of record. A certificate of service, signed by Anne H. Smart, was attached to the Petition for Cancellation. The Petition for Cancellation was never returned as undeliverable. *See* Declaration of Anne H. Smart ("**Smart Decl.**"). On July 30, 2009, the Board instituted the proceeding.

2. Subsequent thereto, on September 8 *and* October 6, 2009, Registrant, through its prior counsel, McDermott Will & Emery, filed Motions for an Extension of Answer or Discovery or Trial Periods With Consent, with HTC's consent on the ground that the parties were engaged in "settlement discussions."

3. On October 14, 2009, Registrant, instead of filing its Answer or seeking a further extension, through its new counsel, Ladas & Parry LLP, filed the Motion to Dismiss. In support thereof, Registrant alleged that: (i) the Amended Trademark Rules 2.111 *et seq.* and 2.119 *require* service on Registrant's local representative and (ii) it became aware of the Petition for Cancellation only after search conducted on an unrelated matter. It is further alleged that but for the foregoing, Registrant would have had "timely and proper notice and presented its meritorious defense and arguments in response to the petition." *See* Motion to Dismiss, ¶ 1-4.

4. Contrary to Registrant's erroneous understanding of the applicable rules, the Trademark Rules do not "require" service of a cancellation petition on the registrant's "local representative". Service is sufficient if, as in this case, made on "the owner of record for the registration . . . at the correspondence address of record in the Office." *See* C.F.R. § 2.111; *see also Chocoladefabriken Lindt & Sprungli AG v. Flores*, 91 U.S.P.Q.2d 1698, 1700 fn. 6 (T.T.A.B. 2009) ("The requirements of Rule 2.111 . . . *service is to be made on respondent directly*, and not on an attorney or authorized representative . . .") (emphasis added).

5. Registrant is the owner of record for both Registration Nos. 3,450,977 and 3,442,507; and as set forth above, service was properly made on Registrant at the correspondence address of record. Moreover, Registrant has had actual knowledge of the Petition for Cancellation as evidenced by the fact that it sought and obtained, on *two* different occasions, HTC's consent to extend time for its Answer. If Registrant required additional time to file its Answer, Registrant simply needed to contact HTC. Instead, Registrant chose to file the frivolous Motion to Dismiss. Therefore, Registrant's claim of prejudice based on failed

service is also meritless.<sup>1</sup> Accordingly, Registrant's Motion to Dismiss is not well taken and simply an attempt to delay the present proceeding. Therefore, the Motion to Dismiss should be denied.<sup>2</sup>

Date: November 2, 2009

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: 

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<sup>1</sup> In the Motion to Dismiss, Registrant has insinuated that the omission of the "mailing zip code" from the certificate of mailing somehow made service deficient. This point is also without merit as the address as noted in the Certificate of Mailing is sufficient for proper delivery as evidenced by the fact that the Petition for Cancellation was never returned as undeliverable. *See Smart Decl.*

<sup>2</sup> Simultaneous herewith, HTC is re-serving copies of the original Petition for Cancellation on Registrant and its attorney of record.

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HTC CORPORATION,

Petitioner,

v.

TC CONNECTION CORP.,

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Cancellation No. 92051288

U.S. Registration No. 3,450,977; and

U.S. Registration No. 3,442,507.

**DECLARATION OF ANNE H. SMART**

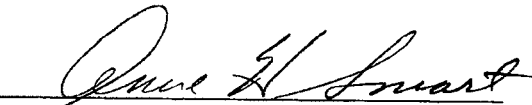
1. I am a legal secretary at Akin Gump Strauss, Hauer & Feld LLP, located at 1333 New Hampshire Ave., NW, Washington, DC 20036. The following facts are based on my own personal knowledge and, if called as a witness, I could and would testify competently to the statements made herein.


2. On July 30, 2009, I signed the Certificate of Service that accompanied the Petition for Cancellation, certifying that I personally mailed said petition, *via* first class mail, to the following: TC Connection, Wickham's Cay I, P.O. Box 362, 3rd Floor, Omar Hodge Building, Road Town, Tortola, British Virgin Islands.

3. To the best of my knowledge, the Petition for Cancellation was properly mailed out to the above address. To date, said petition has not been returned to me or the firm as undeliverable and I have not received any information regarding any mis-delivery of the Petition for Cancellation.

Further, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: November 2, 2009

  
Anne Smart

  
Kathy Ped